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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,950	01/14/2004	W. Daniel Hillis	0803-001-025-000000	6199

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EXAMINER

VALENTIN, JUAN D

ART UNIT	PAPER NUMBER
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2877

DATE MAILED: 08/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/758,950	<b>Applicant(s)</b> HILLIS ET AL.	
	<b>Examiner</b> Juan D. Valentin II	<b>Art Unit</b> 2877	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-70 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-70 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/05, 1/05, 1/04, 3/06, 12/05, 7/05, 11/05</u> | 6) <input type="checkbox"/> Other: ____.  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 101*

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

1. The claimed invention is directed to non-statutory subject matter. With regards to claims 38 & 58, merely identifying; determining; devising; evaluating etc... is not sufficient to constitute a tangible result, since the outcome of the method steps has not been used in a disclosed practical application nor made available in such a manner that its usefulness in a disclosed practical application is realized. See OG Notices: 22 November 2005, "Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility".

*Practical application that produces a useful, concrete, and tangible result* under Section IV determines whether the claimed invention complies with the subject matter eligibility requirement of 35 U.S.C. Sec. 101, sentence 3, in the OG Notice from 22 November 2005 states "In determining whether the claim is for a "practical application," the focus is not on whether the steps taken to achieve a particular result are useful, tangible, and concrete, but rather that the final result achieved by the claimed invention is "useful, tangible, and concrete."

### *Double Patenting*

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined


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application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-70 rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims of U.S. Patent No. 7,053,998 B2 in view of 7,045,760 B2 and U.S. Patent No. 7,053,998 B2 in view of 7,053,809 B2 as shown in the chart below.



10/758,950	7,053,998 B2 in view of 7,045,760 B2	10/758,950	7,053,998 B2 in view of 7,045,760 B2	7,053,809 B2	
1	1	1 & 2	36	1	16
2	2		37	1	17
3	3		38	1	19
4	1		39	2	
5	4		40	2	
6	5		41	3	
7	6		42	1	
8	7		43	10	
9	8		44	10	
10	9		45	11	
11	10		46	12	
12	11		47	20	
13	12		48	18	
14	13		49	21	
15	14		50	1	19 & 20
16	15		51	1	21
17	16		52	1	22
18	17		53	1	23
19	18		54	1	24

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20	19		55	1	25
21	20		56	1	19
22	21		57	1	17 & 26
23	1	4 & 5	58	1	1 & 2
24	1	4 & 5	59	2	
25	1	6	60	2	
26	1	7	61	4	
27	1	8	62	10	
28	1	9	63	10	
29	1	10	64	9	
30	1	11	65	1	
31	1	12	66		
32	1	13	67		
33	1	14	68		
34	1	15	69		
35	1	16	70	1	33

*Allowable Subject Matter*

3. Claims 1, 38, & 58 objected to as being a rejected base claim, but would be allowable if a timely filed terminal disclaimer is filed and/or rewritten to overcome the 35 U.S.C. §101 and including all of the limitations of the base claim.

The following is a statement of reasons for the indication of allowable subject matter:

Regarding claim 1, the prior art fails to disclose or make obvious “a second photo detector array sensitive to the at least one defined wavelength of light, said second photo-detector array positioned proximate to said first photo detector array” and in combination with the other recited limitations of claim 1. Claims 2-37 would be allowed by virtue of dependency on the allowed claim 1.

Regarding claim 38, the prior art fails to disclose or make obvious “forming a second photo detector array sensitive to the at least one defined wavelength of light in a vicinity of the first photo detector array” and in combination with the other recited limitations of claim 38.

Claims 39-57 would be allowed by virtue of dependency on the allowed claim 38.

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Regarding claim 58, the prior art fails to disclose or make obvious “forming a second photo detector array sensitive to the at least one defined wavelength of light in a vicinity of the first photo detector array” and in combination with the other recited limitations of claim 58.

Claims 59-70 would be allowed by virtue of dependency on the allowed claim 58.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled “Comments on Statement of Reasons for Allowance.”

### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Juan D. Valentin II whose telephone number is (571) 272-2433. The examiner can normally be reached on Mon.-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory J. Toatley, Jr. can be reached on (571) 272-2800 ext. 77. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Juan D Valentin II  
Examiner 2877  
JDV  
August 2, 2006



**HWA (ANDREW) LEE**  
**PRIMARY EXAMINER**